

SEP 30 1986

**INTER-OFFICE COMMUNICATION FROM
THE OFFICE OF
CLERK OF THE BOARD OF COUNTY COMMISSIONERS**

DATE: September 29, 1986

TO: Jan Winters, County Administrator
Lisa Heasley, County Attorney's Office
Tom Baird, Asst. Co. Attorney
David Bludworth, State Attorney
Joy Shearer, Asst. Attorney General
Captain Cook, Sheriff's Dept.-Civil
Jerry Nolan, Sheriff's Office-Admin.
John Lehner, PZ&B
Bob Palchanis, Building Division
Patty Young, 4th Dist. Ct. of Appeals
Law Library
County Library (2)
Pinky Yount, PBC Municipal League, Inc.
1708 N. Lakeside Drive, Lake Worth, FL 33460
OTHER: Charter Committee

FROM: John W. Dame
Chief Deputy Clerk

RE: PALM BEACH COUNTY ORDINANCE DISTRIBUTION

ORDINANCE NO. 86-30

**TITLE REFERENCE: AN ORDINANCE AMENDING P.B.C. CHARTER, TO
INCLUDE COUNTYWIDE PLANNING COUNCIL**

Attached is a copy of the above referenced Ordinance of Palm Beach County. This Ordinance has been filed with Florida Department of State and forwarded to Municipal Code Corporation for codification. The effective date is January 1, 1987, if approved by a majority of electors on November 4, 1986.

JWD:ph/lc

attachment

cc:* Commissioners, BCC
Clerk of BCC
Minutes

* If a copy of ord. is needed please advise Ms. Lorie Clinger, Finance Department at 837-2959.

ORDINANCE NO. 86- 30

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PROVIDING FOR AMENDMENT TO THE CHARTER OF PALM BEACH COUNTY, FLORIDA, TO INCLUDE A COUNTYWIDE PLANNING COUNCIL; PROVIDING FOR TITLE; PROVIDING FOR ADOPTION OF AMENDMENT TO CHARTER; PROVIDING FOR REFERENDUM; PROVIDING FOR FORM OF NOTICE; PROVIDING FOR BALLOT LANGUAGE; PROVIDING FOR ADOPTION BY FOUR-FIFTHS VOTE OF THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR INCLUSION IN THE CHARTER OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Section 1(c), Article VIII of the Constitution of the State of Florida provides that by general law a county government may be established by charter, and

WHEREAS, the optional county charter law, Sections 125.80 through 125.88, Florida Statutes, (inclusive), provides that the Board of County Commissioners may propose a charter by ordinance subject to approval of the charter by referendum, and

WHEREAS, the voters of Palm Beach County did adopt a charter for Palm Beach County at the general election on November 6, 1984 effective January 1, 1985, and

WHEREAS, the Board of County Commissioners through its staff has proposed charter amendments which would provide better land use planning for Palm Beach County, and

WHEREAS, informational hearings on the proposed charter amendments have been held throughout Palm Beach County to inform the public about the charter amendments and to receive suggestions to improve the charter amendments, and

WHEREAS, passage of this ordinance will allow the residents of Palm Beach County to adopt the proposed charter amendments or not at a general election to be held November 4, 1986.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

SECTION 1 - TITLE:

This ordinance may be cited as the "Countywide Planning Council Charter Amendment Ordinance."

1 SECTION 2 - ADOPTION OF AMENDMENTS TO CHARTER OF

2 PALM BEACH COUNTY, FLORIDA

3 Subject to the approval of the electorate as required by the
4 Constitution and Laws of Florida and Section 3 of this ordinance, the
5 amendment to the charter of Palm Beach County, Section 1.3 is hereby
6 amended to read as follows and a new Article VII is hereby created to
7 read as follows:

8 Section 1.3 SCOPE OF COUNTY ORDINANCES -
9 CONFLICT WITH MUNICIPAL ORDINANCES.

10 Municipal ordinances shall prevail over County ordinances to
11 the extent of any conflict regardless of the time of passage of the
12 municipal ordinance, except that County ordinances shall prevail over
13 conflicting municipal ordinances for the adoption and amendment of the
14 Countywide Land Use Element adopted in accordance with Article VII of
15 this Charter, "Countywide Planning Council."

16 ARTICLE VII

17 COUNTYWIDE PLANNING COUNCIL

18 Section 7.1 CREATION OF PALM BEACH COUNTY PLANNING COUNCIL.

19 There is hereby created the Palm Beach County Planning
20 Council, hereinafter referred to as the "Planning Council."

21 Section 7.2 PURPOSE.

22 The Planning Council is hereby established to insure the
23 effective harmonious development of a Countywide Future Land Use Plan
24 Element, to coordinate the land use planning process of all governments
25 within the County and to establish a cooperative effort that will
26 resolve, or more importantly, prevent incompatibilities and conflicts
27 among local governments' land use planning efforts.

28 Section 7.3 DEFINITIONS

29 1. Local Government - any County or municipality, as
30 defined in Chapter 163, Florida Statutes.

31 2. Interjurisdictional Incompatibility shall be defined as
32 a potential implementation of a local plan which could impact another
33 local government and which:

34 A. creates a potential unplanned financial burden on one
35 or more local governmental entities, or

- 1 B. creates potential incompatible land uses,
2 density or intensity adjacent to one or more
3 local governmental entities, or
4 C. adversely impacts one or more local
5 governmental entities, or
6 D. creates an excess demand on the infrastructure or
7 natural resources of one or more local
8 governmental entities.

9 Section 7.4 MEMBERSHIP.

10 There shall be seventeen (17) members of the Planning Council
11 all of whom reside in Palm Beach County.

12 A. Six (6) members shall be duly appointed by the County
13 Commission within ninety (90) days of the effective date of this Charter
14 amendment. One (1) appointee shall be a member of the Board of County
15 Commissioners. Two (2) or more appointees may be members of the Board of
16 County Commissioners except that nothing contained herein shall be
17 construed to permit a majority of the Board of County Commissioners to be
18 so appointed. A minimum of four (4) appointees shall reside in the
19 unincorporated area of Palm Beach County.

20 B. Nine (9) members shall be duly appointed by the Palm
21 Beach County Municipal League, Inc., in the following manner: Three (3)
22 members shall be appointed one (1) from each of the three (3) most
23 populated municipalities in the County as determined by the most recent
24 estimates established pursuant to Section 186.901, Florida Statutes. Any
25 reappointment of those members initially appointed from the three (3)
26 most populated municipalities shall be determined based upon the most
27 recent population estimates as established pursuant to §186.901, Florida
28 Statutes. Appointments or reappointments made pursuant to this section,
29 shall be made from nominations received from the three (3) most populated
30 municipalities as described herein. The six (6) remaining at-large
31 appointments shall be made by the Palm Beach County Municipal League,
32 Inc. No more than one (1) municipal appointee shall represent any single
33 municipality.

1 C. The Palm Beach County School Board shall appoint one
2 (1) of its members as a representative.

3 D. The South Florida Water Management District shall
4 appoint one (1) representative.

5 E. All appointments shall be ratified by the Board of
6 County Commissioners unless a majority of the Board of County
7 Commissioners plus one rejects the appointment within thirty (30) days
8 after receiving notice of the appointment. Should an appointment be
9 rejected by the Board of County Commissioners, the appointing entity
10 shall submit another name for ratification until all positions are
11 filled.

12 F. Should any appointing entity not present the Board of
13 County Commissioners its appointment for ratification within ninety (90)
14 days of the effective date of this Charter Amendment, then, in that
15 event, the Board of County Commissioners shall fill the position pursuant
16 to the requirements of this section.

17 Section 7.5 VACANCIES.

18 Any appointing entity may remove and replace any of its
19 appointees at any time by majority vote of the appointing entity.
20 Vacancies shall be filled by the appointing entity with ratification by
21 the Board of County Commissioners.

22 In the event appointments for filling a vacancy are not
23 submitted to the County Commission upon the expiration of a term, the
24 Planning Council shall notify the appointing entity that an appointment
25 must be made within a sixty (60) day period from the time of
26 notification. The former appointee shall serve until replaced. If an
27 appointment is not made within the sixty day period, then the Planning
28 Council by majority vote of all its members shall make such appointments
29 in accordance with the criteria established in this section and submit
30 them for ratification. The term of a Planning Council member shall
31 become vacated upon his death, resignation, forfeiture of membership, or
32 removal from membership in any manner prescribed by law. Such vacancy
33 shall be filled in the manner described herein.

1 Section 7.6 TERMS OF OFFICE.

2 Members shall be appointed for a term of three (3) years
3 after the initial staggered appointments. The staggered appointments are
4 as follows:

5 The South Florida Water Management District member, two (2)
6 County Commissioner appointees, three (3) Municipal League appointees
7 including one of the three (3) most-populated municipality appointees
8 shall be appointed for three (3) years. The School Board member, (2)
9 County Commissioner appointees, and three (3) Municipal League appointees
10 including one of the three (3) most-populated municipality appointees
11 shall be initially appointed for two (2) years. The remaining appointees
12 shall initially serve one (1) year terms.

13 Section 7.7 ADMINISTRATION.

14 A. The Planning Council shall employ an Executive
15 Director who shall hire such other administrative, professional, expert
16 and clerical assistants as are necessary to carry out the duties
17 authorized by this Charter and as provided for in the Planning Council's
18 adopted budget.

19 B. The Planning Council shall adopt reasonable rules of
20 procedure to govern the conduct of its meetings and the performance of
21 its duties.

22 Section 7.8 PREPARATION AND ADOPTION PROCEDURES.

23 Each local government in Palm Beach County shall, upon
24 request, furnish the Planning Council with its current adopted
25 Comprehensive Plan. The Planning Council shall then make a composite of
26 land use plans received and shall analyze the composite plans for
27 potential interjurisdictional incompatibilities as defined herein and
28 shall so advise the affected local government of its findings. All local
29 governments to be affected by potential interjurisdictional
30 incompatibilities as defined herein shall be notified in writing by the
31 Planning Council as to the specific nature of the potential
32 interjurisdictional incompatibilities. The affected local governments
33 shall be given an opportunity to respond in writing to the Planning
34 Council regarding the incompatibilities and the Planning Council shall
35 consider and evaluate the merits of the responses. The Planning Council

1 shall then hold public hearings on the composite plan noting to the
2 public all potential interjurisdictional incompatibilities identified in
3 the composite of the land use plans received from the local governments
4 and the responses received from the affected local governments. The
5 Planning Council shall then prepare a proposed Countywide Future Land Use
6 Element, pursuant to Chapter 163, Florida Statutes, considering the
7 potential interjurisdictional incompatibilities as identified in the
8 composite plan and the comments received at the public hearings. The
9 Planning Council, in preparing the Countywide Future Land Use Element,
10 shall be limited to the composite plan identified above, and shall only
11 modify that composite plan when interjurisdictional incompatibilities as
12 defined above exist. The Planning Council shall provide a draft of the
13 proposed Countywide Future Land Use Element to each local government and
14 request written comments. If the Planning Council concurs with the local
15 government, it shall modify the proposed Countywide Future Land Use
16 Element accordingly. If the Planning Council does not concur with the
17 local government, it shall then conduct public hearings on the proposed
18 Countywide Future Land Use Element and shall recommend for adoption by
19 the Board of County Commissioners a Countywide Future Land Use Element
20 pursuant to Chapter 163, Florida Statutes. The Board of County
21 Commissioners shall adopt the Countywide Future Land Use Element prepared
22 by the Planning Council by a majority vote of the entire Commission. A
23 majority of the Board of County Commissioners plus one shall be required
24 to make any amendment, addition or deletion to the Countywide Land Use
25 Element as recommended by the Planning Council. The Board of County
26 Commissioners, in adopting the Countywide Land Use Element, shall not
27 establish more intense land uses or higher densities than provided for by
28 any local government's adopted Land Use Element without the express
29 consent of the local government.

30 Section 7.9 EFFECTIVE DATE.

31 The Countywide Future Land Use Element shall take effect one
32 year from the date of adoption by the Board of County Commissioners and
33 shall be the adopted Land Use Element pursuant to Chapter 163, Florida
34 Statutes, for each local government, unless the local government's
35 adopted plan has been certified by the Planning Council as consistent

1 with the adopted Countywide Future Land Use Element. If any local
2 government's plan is not certified as consistent by the Planning Council,
3 the Countywide Future Land Use Element shall prevail. Where a local plan
4 has been certified, it shall serve as the Countywide Land Use Element for
5 that area.

6 In the event a future land use incompatibility has arisen
7 between two or more local governments prior to the effective date of this
8 Article VII, and in the event that such local governments are then
9 currently litigating such incompatibilities, the Planning Council shall
10 suspend a determination regarding consistency of those matters in
11 conflict between such local governments until such conflict has been
12 resolved by litigation, and a final order entered, following final
13 appeal. Nothing contained herein shall prohibit any local government
14 from adopting more restrictive land uses than provided for by the
15 Countywide Future Land Use Element.

16 Section 7.10 EVALUATION AND APPRAISAL REPORT

17 Not more than once every two years, the Planning Council
18 shall prepare an Evaluation Report of the adopted Countywide Future Land
19 Use Element pursuant to Chapter 163, Florida Statutes. The Evaluation
20 Report shall identify the success and failure of the Countywide Future
21 Land Use Element in reviewing the land use planning of all local
22 governments within the County and noting the potentiality of
23 incompatibilities between local government's land use plans.

24 Section 7.11 REVIEW PROCESS.

25 The adopted Countywide Land Use Element shall be transmitted
26 to each local government. Within a period of time specified by
27 procedural rule each local government shall, if necessary, propose
28 modifications to its land use element and related elements to make them
29 consistent with the adopted Countywide Land Use Element and transmit the
30 local land use element, related elements and any proposed amendments to
31 the Planning Council. The Planning Council shall review, within a period
32 of time specified by procedural rule, submitted local elements including
33 proposed amendments, if any, and determine whether or not they are
34 consistent with the Countywide Land Use Element.

1 A. If found to be consistent, the Planning Council shall
2 certify the local land use element and related elements. If the elements
3 as certified included proposed amendments, the local government shall
4 adopt those amendments pursuant to Chapter 163, Florida Statutes. The
5 local government shall forward the adopted amendments to the Planning
6 Council within thirty (30) days. If the adopted local amendments are
7 different from the proposed amendments which formed the basis of the
8 certification by the Planning Council, the local elements shall be
9 resubmitted for certification.

10 B. If found to be not consistent, the Planning Council
11 shall identify inconsistencies and specify the modifications to the local
12 elements that are necessary to make it consistent. Upon being notified
13 by the Planning Council that the local elements are not consistent with
14 the Countywide Land Use Element, the local government may then propose
15 amendments to the local elements and transmit the proposed amendments to
16 the Planning Council. The Planning Council shall review the submitted
17 local land use element and related elements and proposed amendments
18 within a period of time specified by procedural rule. Upon finding that
19 the proposed amendments to the local land use elements are consistent
20 with the Countywide Land Use Element, the Planning Council shall certify
21 same. The local government shall adopt those amendments pursuant to
22 Chapter 163, Florida Statutes. The local government shall then forward
23 the adopted amendments to the Planning Council. If the adopted local
24 amendments are different from the proposed amendments which formed the
25 basis of the certification by the Planning Council, the local elements
26 shall be resubmitted for certification. If the Planning Council finds
27 that the local elements are still not consistent with the Countywide Land
28 Use Element, it shall identify such inconsistencies and specify the
29 modifications to the local elements that are necessary to make it
30 consistent. The provisions of this paragraph shall apply to all
31 subsequent proposed amendments transmitted to the Planning Council in
32 response to the inconsistencies identified and modifications suggested by
33 the Planning Council in earlier reviews.

1 Section 7.12 AMENDMENTS.

2 Amendments to the adopted Countywide Land Use Element shall
3 be initiated only by a local government or the Planning Council. Any
4 amendment initiated by the Planning Council shall be based on the
5 Evaluation and Appraisal Report. These amendments shall be adopted by the
6 Board of County Commissioners in the same manner as provided for in the
7 original plan adoption. All amendments initiated by a local government
8 must be transmitted to the Board of County Commissioners with a
9 recommendation by the Planning Council. Any amendment proposed by a
10 local government that is not recommended for approval by the Planning
11 Council can only be approved by a majority of the Board of County
12 Commissioners plus one.

13 Section 7.13 CONSISTENCY REQUIREMENT.

14 All other related elements of the local government's
15 comprehensive plan shall be made consistent with the adopted Countywide
16 Land Use Element and all developments undertaken by, and all actions
17 taken in regard to development orders by governmental agencies shall be
18 consistent with the adopted Countywide Land Use Element.

19 Section 7.14 PLANNING COUNCIL AS LOCAL PLANNING AGENCY.

20 The Planning Council shall be designated the Local Planning
21 Agency pursuant to Chapter 163, Florida Statutes, for all local
22 governments within Palm Beach County only for the purposes expressed
23 within this Article. Further, this section shall not become effective
24 until the Planning Council has prepared a proposed Countywide Future Land
25 Use Element in accordance with Section 7.8.

26 Section 7.15 FUNDING.

27 The Planning Council shall annually adopt a budget and submit
28 it to the Board of County Commissioners. The Board of County
29 Commissioners shall provide the funds requested by the Planning Council
30 unless a majority of the Board plus one rejects or modifies the proposed
31 budget. The County shall fund the Planning Council each year in an
32 amount reasonably sufficient to permit the Planning Council to accomplish
33 its responsibilities.

1 Section 7.16 CONTRACTS, GIFTS AND GRANTS.

2 The Planning Council may enter into contracts, perform
3 studies and may accept gifts, grants, and/or assistance from Federal,
4 State or local governmental units or agencies for the conduct of its work
5 and the realization of its objectives, provided that no condition or
6 limitation be attached, nor any conflict be generated inconsistent with
7 its duties under this article.

8 Section 7.17 LEGAL RIGHTS.

9 If a person, firm or corporation has, by actions in reliance
10 on prior regulations, obtained vested or other legal rights that in law
11 would have prevented a local government from changing those regulations
12 in a way adverse to its interests, then nothing in this Charter
13 authorizes any governmental agency to abridge those rights. Nothing in
14 this section authorizes any governmental agency to adopt a rule or
15 regulation or issue any order that is unduly restrictive or constitutes a
16 taking of property without the payment of full compensation, in violation
17 of the Constitution of the State of Florida or of the United States.

18 Section 7.18 PREVALENCE OVER MUNICIPAL ORDINANCES.

19 The Countywide Land Use Element Ordinance adopted by the
20 Board of County Commissioners pursuant to Chapter 163, Florida Statutes,
21 and this Article shall prevail over municipal land use element ordinances
22 as provided for in Article 1, Section 3 of this Charter. The intent of
23 this Article is to provide countywide uniformity which will best further
24 the interests of the citizens of Palm Beach County. This Article shall
25 permit regulatory preemption but shall never be interpreted by the
26 Planning Council or the Board of County Commissioners as a transfer of
27 functions or powers relating to municipal services.

28 Section 7.19 REPEAL PROVISION

29 This article of the Palm Beach County Charter shall be
30 repealed five (5) years from its effective date or upon a five year
31 multiple thereafter if a majority of local governments in Palm Beach
32 County, through their governing bodies, by resolution, vote to repeal
33 this article within 30 days prior to the 5th year anniversary of the
34 effective date or any subsequent five year multiple of the anniversary of
35 the effective date.

1 SECTION 3 - REFERENDUM:

2 On November 4, 1986, a general election is to be held and in
3 accordance with the requirements of the Constitution and Laws of Florida,
4 the question on the ballot shall be as follows:

5 COUNTYWIDE PLANNING COUNCIL

6 "Shall there be an amendment to the Palm Beach County charter
7 establishing a Countywide Planning Council, which shall: identify
8 incompatibilities in land use among all municipalities and the
9 unincorporated area; prepare a land use element for countywide
10 application; be designated as the Local Planning Agency for the
11 Countywide Land Use Element; providing for: adoption of the Countywide
12 Land Use Element; prevalence of countywide land use element ordinances
13 over municipal land use element ordinances; repeal provision.

14 YES _____

15 NO _____ "

16 SECTION 4 - FORM OF NOTICE:

17 The form of notice of the election by which this charter amendment
18 shall be submitted to referendum shall contain the complete text of this
19 ordinance setting forth the entire proposed amendment as provided by law.

20 SECTION 5 - ADOPTION BY FOUR-FIFTHS VOTE OF BOARD OF COUNTY

21 COMMISSIONERS:

22 Pursuant to Section 6.3 of the Palm Beach County Charter this
23 ordinance providing for amendment to the Palm Beach County Charter was
24 adopted by a four-fifths majority of the Board of County Commissioners of
25 Palm Beach County.

26 SECTION 6 - SEVERABILITY:

27 If any section, paragraph, sentence, clause, phrase, or word of
28 this ordinance is for any reason held by the Court to be unconstitu-
29 tional, inoperative or void, such holding shall not affect the remainder
30 of this ordinance.

31 SECTION 7 - INCLUSION IN THE CHARTER OF

32 PALM BEACH COUNTY, FLORIDA;

33 The provisions of the charter amendment hereby approved shall
34 become and be made a part of the Charter of Palm Beach County, Florida.
35 The Article or Sections of the charter amendment may be renumbered or

relettered to accomplish such, and the word "amendment" may be changed to "section," "article," or any other appropriate word.

SECTION 8 - EFFECTIVE DATE:

The charter amendment shall become law on January 1, 1987, if approved by a majority of those electors voting on the matter.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on the 9th day of September, 1986.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By *Alan Marcus*
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Thomas J. Briff
County Attorney

Acknowledgement by the Department of State of the State of Florida, on this, the 17th day of Sept., 1986.

Acknowledgement from the Department of State received on the 22nd day of September, 1986, at 11:44M., and filed in the Office of the Clerk of the Board of County Commissioners of Palm Beach County, Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio Clerk of the
Board of County Commissioners, do hereby certify to
be a true and correct copy of the original filed in
my office on 9/9/86
DATED at West Palm Beach, Fl. on 9/29/86
JOHN B. DUNKLE, Clerk,
By: *Phyllis A. Nourse* D.C.